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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
8

9 Pacific Logistics Corp,

10 Plaintiff,

11 v.

12 Pacific Logistics Priority Mail, et al.,

13 Defendants.
14

No. CV-19-05023-PHX-SMB

**ORDER GRANTING PACIFIC
LOGISTICS CORP'S EX PARTE
MOTION FOR EARLY DISCOVERY
(SEALED)**

15 The Court has reviewed Plaintiff Pacific Logistics Corp's *Ex Parte* Motion for
16 Early Discovery. Having considered the Motion, the Memorandum of Points and
17 Authorities, the Declarations of Milord A. Keshishian and Eric Hockersmith, the
18 arguments, the exhibits, the proposed subpoenas, and all of the files, records, and
19 proceedings herein, and finding good cause therefore, the Court herby **GRANTS**
20 Plaintiff's Motion.

21 **I. Background**

22 Pacific Logistics Corp ("PLC") is a world renowned high quality shipping and
23 freight services company with commended customer service. Declaration of Eric
24 Hockersmith ("Hockersmith Decl."), ¶3. For over twenty years, PLC has used the Pacific
25 Logistics™ and Pacific Logistics Corp™ as marks, including on its website, advertising,
26 business cards, as part of its www.pacific-logistics.com domain name, and even on its
27 office building and vehicles as shown below:
28



Hockersmith Decl., ¶4. PLC has developed its great reputation and continuously and exclusively used the Pacific Logistics Corp™, PLC PACIFIC LOGISTICS® plus design, and PLC® marks (collectively the “Pacific Logistics Marks”) in the shipping and freight industries. Hockersmith Decl., ¶5. Specifically, PLC owns federally incontestable trademark registrations for PLC PACIFIC LOGISTICS CORP design mark (Registration No. 4,245,361) and PLC word mark (Registration No. 4,245,364), both marks are registered in connection with services in International Class 39, namely: “Freight transportation by truck, rail, air and ship; Freight transportation consultation in the field of freight transportation by truck, rail, air and ship; Supply chain logistics and reverse logistics services, namely, storage, transportation and delivery of goods for others by truck, rail, air and ship.” Hockersmith Decl., ¶¶6-7. PLC also uses its marks on its website and in its www.pacific-logistics.com domain. Hockersmith Decl., ¶8.

Pacific Logistics Priority Mail (“PLPM”), John Doe, Doe Defendants, and Roe Corporations (collectively, “Defendants”) knowingly and willfully adopted a highly similar trademark in order to benefit from PLC’s efforts.



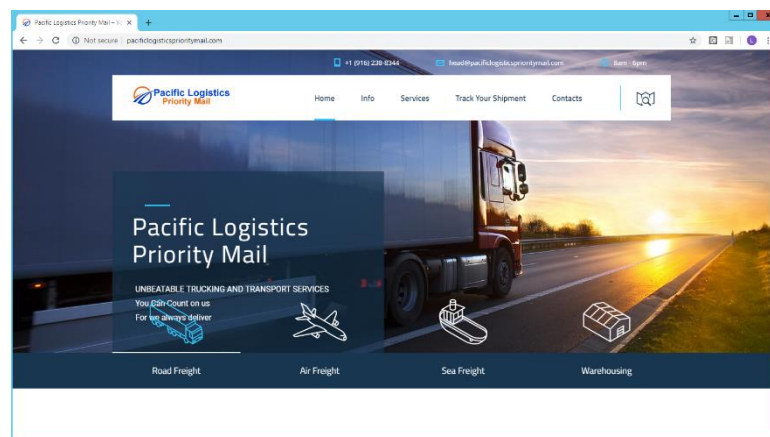
PLC's Mark

Defendants' Accused Mark

Defendants further attempt an aura of legitimacy by publishing a website similar to the Plaintiff to further confuse consumers.



PLC's Website



Defendants' Website

Plaintiff alleges these actions merely perpetuate a façade for Defendants to scam innocent customers and prevent them from realizing the shipping services they sought out.

1 Plaintiff alleges Defendants have successfully confused consumers into believing that
2 they are associated with Plaintiff.

3 Plaintiff alleges Defendants operate a fake website storefront using the confusingly
4 similar www.pacificlogisticsprioritymail.com domain name for a non-existent shipping
5 company since January 2018, almost twenty years after PLC's first date of use.
6 Declaration of Milord A. Keshishian ("Keshishian Decl."), ¶¶6, 29. Plaintiff alleges
7 Defendants' website includes fake customer testimonials and fake organization members.
8 Keshishian Decl., ¶¶7-11. Plaintiff alleges Google and LexisNexis Public Record
9 searches establish the testimonial customers and organization members are fake.
10 Keshishian Decl., ¶¶13-22. Plaintiff alleges Defendants' website provides two locations
11 in the United States, but Google Maps searches of the properties identify other businesses
12 and do not list Defendants' PLPM company. Keshishian Decl., ¶23. Additionally,
13 Plaintiff alleges Defendants use no less than three different email address extensions,
14 including pacificlogisticsprioritymail@gmail.com,
15 contact@pacificlogisticsprioritymail.com, and goerge.brolin@bestlogistic.com
16 (purported Chairman and CEO's email address). Keshishian Decl., ¶¶6, 24-25, 28.
17 Plaintiff contends the latter two email addresses are displayed on the Defendants' website;
18 however, they do not connect to a real inbox proving that Defendants are not a legitimate
19 shipping and freight company and that the phone number does not connect to an actual
20 person. Keshishian Decl., ¶24-25, 33-34.

22 On or about August 7, 2019, Catherine Gallagher – an actually confused consumer
23 – emailed PLC through its info@pacific-logistics.com address. Hockersmith Decl., ¶10.
24 Ms. Gallagher, mistakenly believing that PLC and Defendants were the same entity,
25 inquired about her package's delivery status since she paid Defendants' insurance fees,
26 attaching a screenshot of Defendants' invoice. Hockersmith Decl., ¶10. Prior to this
27 communication, PLC never interacted with Ms. Gallagher and she was never one of its
28 customers. Hockersmith Decl., ¶11. Prior to Ms. Gallagher's contact, PLC was not aware

1 of Defendants' fraudulent operations. Hockersmith Decl., ¶12.

2 PLC forwarded Ms. Gallagher's email to its counsel Milord A. Keshishian, and he
3 contacted Ms. Gallagher to alleviate her actual confusion and inform her that PLC and
4 Defendants were not related entities. Keshishian Decl., ¶¶26-27. Ms. Gallagher
5 responded by providing screenshots of her Western Union money transfer to Defendants
6 for "refundable insurance," and forwarded her previous communications with Defendants.
7 Keshishian Decl., ¶¶27-28.

8 Ms. Gallagher's email communications with PLPM demonstrate a typical scam to
9 pressure Ms. Gallagher to pay additional fees via untraceable methods with a false
10 promise of receiving her package. Keshishian Decl., ¶28. PLPM advised Ms. Gallagher
11 she needed to pay \$310 for additional "insurance" before the product could be shipped,
12 which it would "refund" after the delivery. Keshishian Decl., ¶28. Ms. Gallagher
13 complied and paid PLPM \$310 via an untraceable Western Union transfer, PLPM then
14 stated the package had insufficient "stamps" and required further payment of either an
15 additional \$322 for a three-year term or \$505 for a five-year term for the release of her
16 package. Keshishian Decl., ¶28. Ms. Gallagher expressed her frustration with PLPM,
17 calling them "scammers," to which they responded that she was following bad advice and
18 needed to remit payment. Keshishian Decl., ¶28. Ms. Gallagher then contacted Plaintiff
19 – believing it was related to PLPM – regarding the delivery status of her package.
20 Hockersmith Decl., ¶10.

22 Plaintiff contends Defendants have succeeded in not only infringing PLC's
23 trademarks and harming its goodwill, but also defrauding consumer.

24 **II. Discussion**

25 A court order is required to conduct discovery prior to a Rule 26(f) conference
26 between the parties. *See* Fed. R. Civ. P. 26(d)(1) ("A party may not seek discovery from
27 any source before the parties have conferred as required by Rule 26(f), except ... by court
28 order."). "In fashioning Rule 26(d) discovery orders, the district court wields broad

1 discretion.” *Marketo, Inc. v. Doe*, No. 18-CV-06792-JSC, 2018 WL 6046464, at *1 (N.D.
2 Cal. Nov. 19, 2018) (citing *Laub v. U.S. Dep’t of Interior*, 342 F.3d 1080, 1093 (9th Cir.
3 2003)).

4 Courts within the Ninth Circuit apply a “good cause” standard in determining
5 whether to permit early discovery. *Third Degree Films, Inc. v. Does 1-131*, 280 F.R.D.
6 493, 499 (D. Ariz. 2012). “Good cause may be found where the need for expedited
7 discovery, in consideration of the administration of justice, outweighs the prejudice of the
8 responding party.” *Marketo*, 2018 WL 6046464, at *1 (quoting *Semitoool, Inc. v. Tokyo*
9 *Electron Am., Inc.*, 208 F.R.D. 273, 276 (N.D. Cal. 2002)).

10 A plaintiff “should be given an opportunity through discovery to identify the
11 unknown defendants, unless it is clear that discovery would not uncover the identities, or
12 that the complaint would be dismissed on other grounds.” *Gillespie v. Civiletti*, 629 F.2d
13 637, 642 (9th Cir. 1980). Courts consider four prongs in determining whether there is
14 “good cause” permitting expedited discovery to identify doe defendants:
15

16 (1) the plaintiff can identify the missing party with sufficient specificity
17 such that the Court can determine that defendant is a real person or entity
18 who could be sued in federal court; (2) the plaintiff has identified all
19 previous steps taken to locate the elusive defendant; (3) the plaintiff’s suit
20 against defendant could withstand a motion to dismiss; and (4) the plaintiff
21 has demonstrated that there is a reasonable likelihood of being able to
22 identify the defendant through discovery such that service of process would
23 be possible.
24

25 *Marketo*, 2018 WL 6046464, at *2 (citing *OpenMind Solutions, Inc. v. Does 1-39*, No.
26 11-CV-03311-MEJ, 2011 WL 4715200, at *2 (N.D. Cal. Oct. 7, 2011)).
27

28 “In Internet infringement cases, courts routinely find good cause exists to issue a

1 Rule 45 subpoena to discover a Doe defendant's identity." *UMG Recordings, Inc. v. Doe*,
2 No. 08-CV-01193-SBA, 2008 WL 4104214, at *4 (N.D. Cal. Sept. 3, 2008). In *Marketo*,
3 the Court granted plaintiff's *ex parte* motion for early discovery to learn the true identities
4 of the doe defendants that infringed its trademarks by using them in connection with
5 similar services. *Marketo*, 2018 WL 6046464, at *1. In *G.N. Iheaku*, the court granted
6 plaintiff's request for early discovery, allowing plaintiff to serve subpoenas to obtain
7 identifying information on doe defendants. *G.N. Iheaku & Co. Ltd. v. Does 1-3*, No. C
8 14-02069 LB, 2014 WL 2759075, at *3 (N.D. Cal. June 17, 2014).

9
10 **A. Identify the Defendants with specificity**

11 Under the first factor, "the Court must examine whether the Plaintiff has identified
12 the Defendants with sufficient specificity, demonstrating that each Defendant is a real
13 person or entity who would be subjected to jurisdiction in this Court." *Marketo*, 2018 WL
14 6046464, at *2 (quoting *Pac. Century Int'l, Ltd. v. Does 1-48*, No. 11-3823, 2011 WL
15 4725243, at *2 (N.D. Cal. Oct. 7, 2011)).

16 PLC identified Defendants as a group of individuals and/or entities that registered
17 and own the www.pacificlogisticsprioritymail.com domain name and use three different
18 email address extensions, including pacificlogisticsprioritymail@gmail.com,
19 contact@pacificlogisticsprioritymail.com, and goerge.brolin@bestlogistic.com
20 (purported Chairman and CEO's email address). PLC also identified the Defendants as
21 those defrauding innocent consumers, like Ms. Gallagher, through use of Plaintiff's
22 Pacific Logistics Marks by extorting money under the guise of insurance and postage fees
23 for shipment fulfillment. Therefore, the Court finds PLC defined the Defendants with
24 particularity in its Complaint.

25 **B. PLC's previous attempts to identify and locate Doe Defendants and**
26 **Roe Corporations**

27 The second prong "is aimed at ensuring that plaintiffs make a good faith effort to
28 comply with the requirements of service of process and specifically identifying

1 defendants.” *Marketo*, 2018 WL 6046464, at *2 (quoting *Columbia Ins. Co. v.*
2 *seescandy.com*, 185 F.R.D. 579 (N.D. Cal. 1999) (internal quotations omitted).

3 PLC attempted to identify and locate the Defendants by using the information
4 found on the www.pacificlogisticsprioritymail.com website, running Google and
5 LexisNexis Public Records searches, and searching for the domain name registrant on the
6 WhoIs database. Searches were conducted for the following: (1) Pacific Logistics Priority
7 Mail; (2) Jonathan Briggs; (3) Lisa Briggs; (4) Sultan Malik Oglu; (5) Goerge Brolin; (6)
8 Ethan Portman; (7) Richard Kitch; and (8) Sinthia Forester. Keshishian Decl., ¶¶12-19.
9 All of the searches are unfruitful because the identified parties are not real persons, there
10 are several with the same name all of whom cannot be linked to PLPM (particularly Ethan
11 Portman), and PLPM does not have any public records. Keshishian Decl., ¶¶13-19.
12 Further, Google searches of the “headquarters” and “branch office” do not return results
13 identifying PLPM. Keshishian Decl., ¶23. Moreover, PLC called the phone number listed
14 on the www.pacificlogisticsprioritymail.com website, which did not connect to an actual
15 person, nor identified that the call was made to PLPM. Keshishian Decl., ¶33-34.
16 Defendants also use a private registration service to mask their identity with the registrar.
17 Keshishian Decl., ¶30.

18
19 Additionally, upon learning of Defendants’ activities, PLC attempted to hire a
20 private investigator to identify and locate the Defendants. Keshishian Decl., ¶35.
21 However, after interviewing prospective investigators, it was clear that this type of
22 investigation was time and cost prohibitive. Keshishian Decl., ¶35.

23 Further, PLC did not report claims of trademark infringement to NameSilo, Privacy
24 Guardian, CloudFlare, and Google fearing that the Defendants may transfer the domain
25 name to registrars outside of the Court’s jurisdiction – or any other U.S. court’s
26 jurisdiction – prior to filing suit as each entity reports any allegations to the alleged
27 infringer. Keshishian Decl., ¶¶36-40, 45.

28 The Court is satisfied with PLC’s previous attempts to identify the Defendants.

1 **C. The Complaint will survive a Motion to Dismiss**

2 This Court has *in rem* jurisdiction and venue is proper under [15 U.S.C. § 1125](#) *et*
3 *seq.* because: (1) the Defendants website violates PLC’s trademark rights; (2) PLC is
4 unable to obtain in personam jurisdiction over Defendants because they operate a
5 fraudulent scheme from outside of the U.S.; and (3) *in rem* jurisdiction over domain names
6 is proper in the place of incorporation of the registrar for the domain name. *See* [15 U.S.C.](#)
7 [1125\(d\)\(2\)\(A\)](#). Because Defendants’ registrar, NameSilo, is located in Phoenix, Arizona
8 and its terms of service indicate jurisdiction in this District, Defendants agreed to this
9 Court’s jurisdiction. Keshishian Decl., ¶37.

10 Further, with regard to the substantive causes of action, PLC has sufficiently
11 pleaded a trademark infringement claim by showing it has valid, protectable trademarks
12 and that Defendants use a confusingly similar mark, that has actually caused confusion in
13 the marketplace. *See Herb Reed Enterprises, LLC v. Florida Entm’t Mgmt., Inc.*, 736
14 F.3d 1239, 1247 (9th Cir. 2013). PLC also has a valid cause of action under the
15 Anticybersquatting Consumer Protection Act because Defendants registered and use the
16 Pacific Logistics Marks in their infringing domain name,
17 [www.pacificlogisticsprioritymail.com](#), which is confusingly similar to PLC’s
18 [www.pacific-logistics.com](#) domain. Defendants “acted with bad faith” by designing their
19 website to emulate and copy elements of PLC’s website, including referring to themselves
20 as “Pacific Logistics” throughout the website to defraud consumers. *See DSPT Int’l, Inc.*
21 *v. Nahum*, 624 F.3d 1213, 1218-19 (9th Cir. 2010) (listing cyberpiracy elements). These
22 allegations also support claims for unfair competition/false designation of origin, common
23 law trademark infringement, and unfair competition under Cal. Bus. & Prof. Code §
24 17200. *See New W. Corp. v. NYM Co. of California*, 595 F.2d 1194, 1201 (9th Cir. 1979)
25 (likelihood of confusion is the test used for trademark infringement, unfair competition,
26 and false designation of origin); *Cleary v. News Corp.*, 30 F.3d 1255, 1264 (9th Cir. 1994)
27 (“This Circuit has consistently held that state common law claims of unfair competition
28

1 and actions pursuant to California Business and Professions Code § 17200 are
2 ‘substantially congruent’ to claims made under the Lanham Act.”).

3 Therefore, the Court finds PLC’s Complaint will survive a motion to dismiss.

4 **D. PLC will be able to identify the Doe Defendants and Roe Corporations**
5 **to effect service**

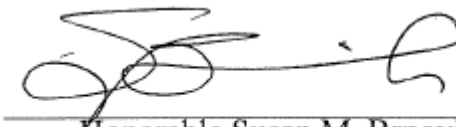
6 The Court agrees with Plaintiff that Defendants are likely required to provide
7 accurate personal information to NameSilo, Privacy Guardian, CloudFlare, and Google in
8 order to use their services, such as for confirmations of purchases and renewals, email
9 reminders, and the like. Therefore, subpoenaing information from these entities limited
10 to account for the www.pacificlogisticsprioritymail.com domain, will uncover the
11 Defendants’ names and locations. *Gillespie*, 629 F.2d at 642-43; *Marketo*, 2018 WL
12 6046464, at *3 (“[U]nless it is clear that discovery would not uncover the identities,” early
13 discovery should be permitted to identify doe defendants.).

14 **III. Conclusion**

15 The Court finds Plaintiff satisfied all requisite elements and has established good
16 cause for early discovery. The Court reviewed the proposed subpoenas and find that they
17 are limited in scope to reveal the identities and locations for the Defendants.

18 **IT IS HEREBY ORDERED** that Pacific Logistics Corp’s *Ex Parte* Motion for
19 Early Discovery (Doc. 6) is hereby GRANTED as follows: (1) Plaintiff may immediately
20 serve the proposed subpoenas upon NameSilo, Privacy Guardian, CloudFlare, and
21 Google; and (2) a copy of this Order must be included when serving any subpoena
22 pursuant to this Order.
23

24 Dated this 29th day of August, 2019.

25
26
27 
28 Honorable Susan M. Brnovich
United States District Judge

cc: pla counsel